

JUN 4 1983

ALEXANDER L. STEVENS,  
CLERK

No. 82 - 1455

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1982

**LEONARD ELLISON,**

*Petitioner,*

vs.

**KANE COUNTY SHERIFF'S OFFICE MERIT COMMISSION,  
GENEVA, ILLINOIS, and GEORGE B. KRAMER, SHERIFF  
OF KANE COUNTY, ILLINOIS,**

*Respondents.*

**On Petition For Writ Of Certiorari To The Appellate  
Court Of Illinois, Second District**

**REPLY TO RESPONSE TO PETITION FOR WRIT  
OF CERTIORARI TO THE APPELLATE COURT  
OF ILLINOIS, SECOND DISTRICT**

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## TABLE OF CONTENTS

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TABLE OF AUTHORITIES .....	i
REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI .....	1-4
CONCLUSION .....	4

## TABLE OF AUTHORITIES

### *Cases*

<i>Begg v. G. Joe Moffitt, et al.</i> , 555 F. Supp. 1344 (1983) .....	3
<i>Monell v. Department of Social Services</i> , 436 U.S. 658 (1978) .....	3
<i>Monroe v. Pape</i> , 365 U.S. 167 (1961) .....	3

### *Constitutional Provisions and Rules*

U.S. Constitution, Fourteenth Amendment .....	2
United States Supreme Court Rule 17(a) .....	2
United States Supreme Court Rule 17(c) .....	3

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Analyzing the response to the petitioner's writ of certiorari, the respondents stress in their statement of facts, that, while the Illinois Appellate Court was remanding the matter for petitioner's failure to exhaust his administrative remedies, in fact, the petitioner had already exhausted his administrative remedies by filing a complaint for administrative review from an administrative agency's decision discharging the plaintiff from his employment.

With the above statement of fact the petitioner acknowledges that he had raised the federal issues in the administrative hearing which he has appealed via a complaint for administrative review.

But, in rebuttal, the petitioner disagrees with the respondents' position that the raising of those issues at the administrative hearing which federal issues are included in the complaint for administrative review should be a bar to the writ of certiorari.

The significance of the writ of certiorari, in this instance, is that it concerns an issue of statutory interpretation.

By its decision the Illinois Appellate Court fortified by the Illinois Supreme Court's denial of a petition for appeal has determined that constitutional interpretation of the Illinois statute in question cannot be subjected to judicial review unless there is an exhaustion of administrative remedies.

Thus the decision of the Illinois Appellate Court in conjunction with the Illinois Supreme Court's denial of the petition for leave to appeal subjects persons, such as the petitioner, to administrative hearings postured upon unconstitutional grounds.

Consequently, under United States Supreme Court Rule 17(a), the Illinois Supreme Court, in this instance, has ruled that unconstitutional statutes can be grounds for dismissal prior to exhaustion of administrative remedies.

Such a ruling is a violation of the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution as analyzed by the dissenting opinion of the Illinois Appellate Court as found in the writ of certiorari.

Furthermore, the Illinois Firearms and Ammunition Act which provides for a discretionary hearing cannot be dispositive of the matter, since the writ of certiorari deals with an Illinois criminal statute that does not provide for any hearing provision.

Because of the Illinois criminal statute to which the writ of certiorari relates, the petitioner is unable to refute the irrebuttable presumption of unfitness to carry firearms or firearms ammunition on the basis of being admitted into a mental hospital while in the possession of firearms or firearms ammunition within five years thereby denying him the opportunity to continue in his police employment.

At the same time, the petitioner is not required to exhaust his administrative remedies to pursue an attack upon constitutional grounds of a statute. *Monroe v. Pape*, 365 U.S. 167 (1961); *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Begg v. G. Joe Moffitt, et al.*, 555 F. Supp. 1344 (1983).

Lastly the decision on the merits, in this instance, will terminate the controversy in that petitioner in the appeal process of his discharge will be confronted with either two issues or one.

If the Illinois criminal statute, in this instance, is determined to be unconstitutional, then his appeal will only be burdened with the complaint based upon his alleged fraud in connection with an Illinois Firearms Act application.

By disposing of the unconstitutional considerations of the Illinois statute, the United States Supreme Court will be complying with its Rule 17(c), since its decision on this question will be relevant not only to the petitioner, but to all Illinois Police Officers and all other United States

Police Officers who may be subjected to such similar statutes.

## CONCLUSION

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For reasons enumerated, herein, petitioner prays that the writ of certiorari be granted.

Respectfully submitted,

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